

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

San Jose, CA

ALAMO RENT-A-CAR

Employer

and

Case 32-RC-4602

TEAMSTERS AUTOMOTIVE EMPLOYEES and
ALLIED WORKERS LOCAL 665, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, based on the Decision and Direction of Election in Case 20-RC-17501, and I find, that the Employer, a Florida corporation with a facility at 2752 De La Cruz Boulevard, Santa Clara, California, near San Jose International Airport (hereinafter "the San Jose facility"), is engaged in the retail rental of automobiles. During the calendar year immediately preceding the hearing in this case, the Employer earned gross revenues in excess of \$500,000. During the same period, the Employer purchased and received goods valued in excess of \$5,000, which originated from points located outside the State of California. Based on the foregoing stipulation, it is

¹ Briefs filed by the parties have been duly considered.

concluded that the Employer is engaged in commerce and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, based on the Decision and Direction of Election in Case 20-RC-17501, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner's business agent testified that the Petitioner currently has collective bargaining agreements with other rental car companies doing business at San Jose Airport, including Hertz, Avis, Budget and National. These agreements cover hours of work, wages and benefits, and other terms and conditions of employment for employees such as service agents, mechanics, shuttlers, and bus drivers. Based on the foregoing, and the parties' stipulation, it is concluded that the Petitioner is a labor organization within the meaning of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. No party contends that there is a contract bar to this proceeding.

5. As clarified and amended at the hearing, Petitioner seeks to represent a unit comprised of all full-time and regular part-time service agents (including production lead), bus drivers, mechanic, assistant mechanic,² "best friend" gate attendants,³ "best friend" rental return agents, shuttlers,⁴ and Park and Fly cashiers employed by the Employer at its facilities located in Santa Clara, California servicing San Jose International Airport, excluding rental agents, lead rental agents, administrative clerk, and all other employees, guards, and supervisors as defined in the Act. Contrary to the Petitioner, the Employer contends that the only appropriate unit is one that includes all employees employed at its San Jose facility, thereby including the rental agents, lead rental agents, and administrative clerk. The petitioned-for unit consists of approximately 43 employees.

² The original petition sought to represent the Employer's "utility persons." After clarification at the hearing, Petitioner amended its petition to include the classifications comparable to and intended to be included within the term "utility persons," i.e., mechanic and assistant to mechanic.

³ The original petition sought to represent the Employer's "gate attendants." I find that this term corresponds with the classification "best friend gate attendants" as used at the hearing. To the extent that the term "gate attendants" does not already encompass "best friend rental return agents," the Petitioner amended the petition at the hearing to include "best friend rental return agents."

⁴ The original petition sought to represent the Employer's "drivers." After clarification at the hearing, Petitioner amended its petition to include the classifications comparable to and intended to be included within the term "drivers," i.e., shuttlers. At points in the transcript, the parties appear to utilize the terms "shuffler" and "shuttler" interchangeably. I find that there is no material difference between the terms, that each term includes the other, and that "shuttler" is the appropriate and more commonly used term.

There is no indication from the record that Petitioner seeks to represent the following persons: Regional Vice President Anthony Juliano, Acting City Manager of San Jose Vladimir Nedic, San Jose Shift Manager Susan Najjar, San Jose Shift Manager Ted Resson, and San Jose Shift Manager Andries Pichon. The parties apparently do not contest, the record supports, and I find, that these persons are supervisors under the Act based on their authority to responsibly direct employees under their supervision. Accordingly, they are hereby excluded from the unit.

The Employer operates a rental car agency from 6:00 a.m. to 12:30 a.m. 7 days a week at the San Jose location. Approximately 50 persons are employed there including service agents, a lead service agent (“production lead”), shuttlers, rental agents, lead rental agents, bus drivers, best friend gate attendants, best friend rental return agents, Park and Fly cashiers, a mechanic, an assistant mechanic, and an administrative clerk. The Employer assumed control of the present site from National Rental Car and began operating there in January 1999.

Service Agents

The eight service agents at the San Jose facility are primarily responsible for washing, vacuuming, and gassing vehicles in order to ready them for rental. Service agents also prepare cars received from their manufacturers for them to be put into rental service for the first time. Service agents wear the standard Alamo uniform, which includes navy blue pants, a navy blue jacket, and a choice of a yellow or navy blue t-shirt or pullover.⁵ Like other Alamo employees, service agents punch a time clock that is located in the break room in the main Rental Plaza. Their starting wage is \$6.25 per hour, with a 25 cent hourly raise available upon the completion of a 90 day probation period.

Shuttlers

The two shuttlers move rental cars from various locations as needed. Shuttlers move rental cars around the Alamo parking lot, including from the rental return area to the car wash area, and occasionally move cars around the Park and Fly lot. Shuttlers wear the same standard Alamo uniform as the service agents, which includes navy blue pants, a navy blue jacket, and a choice of a yellow or navy blue t-shirt or pullover. Shuttlers punch the time clock that is located in the break room in the main Rental Plaza. Their starting wage is \$6.00 per hour, with a 25 cent hourly raise available upon the completion of a 90 day probation period.

Bus Drivers

⁵ It appears from the record that all Alamo employees may wear an Alamo hat if they prefer but are not required to do so as part of their Alamo uniform. I therefore have not relied upon any evidence of which employees do and do not wear hats in the course of rendering my decision.

The Employer's 17 bus drivers drive the shuttle bus between the San Jose facility and San Jose International Airport, also shuttling customers to and from the Park and Fly facility immediately adjacent to the Employer's facility. Bus drivers wear essentially the same standard Alamo uniform as the service agents, which includes navy blue pants, a navy blue jacket, and a choice of a yellow or navy blue t-shirt or pullover, but with the additional option of wearing a striped shirt. Bus drivers punch the time clock that is located in the break room in the main Rental Plaza. Their starting wage is \$8.50 per hour, with a 50 cent hourly raise available upon the completion of a 90 day probation period.

Mechanic

The mechanic performs the major and minor on-site repairs to, and maintenance of, the rental vehicles and shuttle buses.⁶ The mechanic prepares cars received from their manufacturers to be put into rental service, and prepares cars to be shipped back to their manufacturers or to auctioneers when they are no longer appropriate for use as rental vehicles. The record does not reflect the uniform worn by the mechanic. The mechanic punches the time clock that is located in the break room in the main Rental Plaza. The record does not reflect the starting pay for a mechanic, as the person presently in that position has been employed by the Employer for many years, and currently makes approximately \$12 per hour.

Assistant to Mechanic or Mechanic's Helper

The assistant to the mechanic performs essentially the same functions as does the mechanic, but with somewhat more emphasis on maintenance work (e.g., oil changes, fluid checks, tire rotations, etc.) than on repair work. Like the mechanic, the assistant to the mechanic prepares cars received from their manufacturers to be put into rental service, and prepares cars to be shipped back to their manufacturers or to auctioneers when they are no longer appropriate for use as rental vehicles. The record does not reflect the uniform worn by the assistant to the mechanic. The starting wage for the assistant to the mechanic is \$8.25 per hour, with a 25 cent hourly raise available upon the completion of a 90 day probation period.

"Best Friend" Gate Attendants

The three "best friend" gate attendants man the area where customers depart the premises with their rental vehicles. Using either a hand held computer with a scanner or by visually inspecting, these attendants make sure that the vehicle identification numbers of the departing cars match up with those in the computer system and on the rental contracts. The best friend gate attendants do not wear any metallic badge which might resemble a police badge, do not carry any weapons, are not authorized to use force, and

⁶ Certain major repairs, e.g., extensive engine work, are generally performed by outside companies off the Employer's premises rather than handled by the mechanic.

are instructed to notify the police or airport security if necessary. Best friend gate attendants wear the same standard Alamo uniform as the service agents, which includes navy blue pants, a navy blue jacket, and a choice of a yellow or navy blue t-shirt or pullover. Best friend gate attendants punch the time clock that is located in the break room in the main Rental Plaza. Their starting wage is \$6.50 per hour, with a 25 cent hourly raise available upon the completion of a 90 day probation period.

“Best Friend” Rental Return Agents

The three “best friend” rental return agents generally check in vehicles returned by customers at the return area using a hand held computer. They input such information as vehicle identification numbers, car mileage and gas readings into the computer system, and check for damage to the vehicle. Unless the customer needs to go inside to the main rental counter to pay cash, complete an accident report, or take some other action, the transaction can be completed with the best friend rental return agent outside. Best friend rental return agents wear the same standard Alamo uniform as the service agents, which includes navy blue pants, a navy blue jacket, and a choice of a yellow or navy blue t-shirt or pullover. Best friend rental return agents punch the time clock that is located in the break room in the main Rental Plaza. Their starting wage is \$6.50 per hour, with a 25 cent hourly raise available upon the completion of a 90 day probation period.

Park and Fly Cashiers

The seven Park and Fly cashiers staff the booth at the exit of the Park and Fly portion of the parking lot shared by the Employer and Park and Fly.⁷ Unlike the Alamo rental facility which is open from 6:00 a.m. to 12:30 a.m. daily, the booth at the exit to the Park and Fly lot is staffed 24 hours a day so that a customer can have access to his/her car at any time. The cashiers wear the standard Alamo uniform, which includes navy blue pants, a navy blue jacket, and a choice of a yellow or navy blue t-shirt or pullover, but with an additional option of a striped shirt with a collar. The cashiers punch a time clock that is located in the break room in the main Rental Plaza. Their starting wage is \$6.25 per hour, with a 25 cent hourly raise available upon the completion of a 90 day probation period.

Administrative Clerk

The one administrative clerk primarily handles paperwork including organizing papers from the rental counter, reviewing and prepping contracts for mailing, preparing reports, preparing personnel paperwork on employee hires and terminations, and

⁷ The Alamo portion of the lot and the Park and Fly portion of the lot are separated by poles so that pedestrians can get through but vehicles cannot. The entrance to the Park and Fly lot is approximately 50-60 yards down De La Cruz Boulevard from the entrance to the Employer’s rental facility. The Park and Fly portion of the lot is used by airline passengers parking their own cars in the manner of a long-term parking lot at an airport.

distributing paychecks. Unlike the service agents, bus drivers, shuttlers, best friends, and cashiers, the administrative clerk wears khaki pants rather than navy blue pants.⁸ Also unlike other Alamo employees, the administrative clerk wears a striped blue and white shirt, rather than the choice of yellow or navy blue non-striped shirt.⁹ The administrative clerk punches a time clock that is located in the break room in the main Rental Plaza. The starting wage is \$7.75 per hour, with a 25 cent hourly raise available upon the completion of a 90 day probation period.

Rental Agents

The primary duty of rental agents is to work behind the counter at the main Rental Plaza interacting with customers and preparing rental contracts. Unlike the service agents, bus drivers, shuttlers, best friends, and cashiers, the rental agent wears khaki pants rather than navy blue pants. Also unlike other Alamo employees, the rental agent has the option of wearing a turtle neck shirt and the option of wearing a sweater. It also appears from the record that rental agents wear a striped blue and white shirt, rather than the choice of yellow or navy blue non-striped shirt. The rental agents punch a time clock that is located in the break room in the main Rental Plaza. The starting wage is \$5.75 per hour, with a 25 cent hourly raise available upon the completion of a 90 day probation period. However, as discussed in detail below, the vast majority of rental agents' pay is in the form of bonuses or commissions based upon the number of rental contracts which the agents sell or prepare.

Lead Rental Agents

Like rental agents, the two lead rental agents work behind the main rental counter interacting with customers and preparing rental contracts. Lead rental agents also direct regular rental agents. The uniform worn by lead rental agents, if different from regular rental agents, is not entirely clear from the record.¹⁰ The lead rental agents punch a time clock that is located in the break room in the main Rental Plaza. The starting wage for a lead rental agent, if different from a regular rental agent, is not clear from the record.

Production Lead (Lead Service Agent)

The parties do not dispute the appropriateness of including the one production lead in the unit. There was evidence adduced that the production lead oversees the

⁸ The record indicates that the khaki pants are worn only by the administrative clerk, rental agents, and managers.

⁹ The record indicates that the blue and white striped shirts are worn only by the administrative clerk, rental agents, bus drivers, and "some" leads.

¹⁰ Acting City Manager Nedic testified that "some of our leads" wear the striped blue and white shirt worn by rental agent Souad Qubti at the hearing.

service agents, bus drivers, best friends,¹¹ and administrative clerk, and that “leads” sometimes manage the facility on Sundays when no shift manager is working. However, the evidence also established that the shift managers rather than the production lead are responsible for the scheduling of employees’ working hours and for preparing evaluations of employees.¹² Further, no party introduced evidence that the production lead possesses authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline any employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action. I therefore find no basis for excluding the production lead from the unit as a statutory supervisor.

Analysis

It is well established that the unit sought by Petitioner does not have to be the only appropriate unit, but only an appropriate unit. In addition, the Board is exceedingly reluctant to require a labor organization to represent employees it does not wish to represent. See Overnite Transportation Co. 322 NLRB 723 (1996); Mc-Mor-Han Trucking Co., 166 NLRB 700 (1967).¹³ Moreover, even though the Board has held that a petitioner’s wishes are not determinative or controlling in the placement of employees, see Airco, Inc. 273 NLRB 348 (1984), the Board has historically recognized those desires as being a relevant consideration in the making of unit determinations. See Overnite Transportation Co., supra; Mc-Mor-Han Trucking Co., supra.¹⁴

The Board does not apply any per se rules in connection with the inclusion or exclusion of any classification of employees in any unit. In deciding whether a unit is appropriate, the Board first considers the Union’s petition and whether that unit is appropriate. See P.J. Dick Contracting, 290 NLRB 150, 151 (1988). The Board, however, does not compel a petitioner to seek any particular appropriate unit. The Board’s declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. See Black & Decker Mfg. Co. 147 NLRB 825, 828 (1964). A Union is not required to request representation in the most comprehensive or largest unit of employees

¹¹ It was not clear from the record whether the production lead supervises the best friend gate attendants, best friend rental return agents, or both.

¹² The production lead apparently has some input in the evaluations of those persons he/she oversees, but the final authority as to the evaluations rests with the Acting City Manager.

¹³ For this reason, the Employer is incorrect in asserting that there is a presumption in favor of a wall-to-wall unit and that the Petitioner has the burden of showing conclusively why excluding certain employees from the unit is appropriate (Employer’s Brief, p. 8). While the initial burden is on the Petitioner to show that the requested unit is “an” appropriate unit, the burden then shifts to the Employer to demonstrate why the requested unit is inappropriate and a wall-to-wall unit is instead necessary.

¹⁴ I find no support in the record for the Employer’s conclusory assertion in its post-hearing brief that the composition of the petitioned-for unit is “solely based on political considerations.”

of an employer unless “an appropriate unit compatible with that requested unit does not exist.” See P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963). In arriving at an appropriate unit determination, the Board weighs various community-of-interest factors, including:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs . . . ; the infrequency or lack of contact with other employees; lack of integration with other employees; lack of integration with work functions of other employees or interchange with them; and the history of bargaining.

Id. at 724, citing Kalamazoo Paper Box Corporation, 136 NLRB 134 137 (1962). No one of the above factors has controlling weight and there are no *per se* rules to include or exclude any classification of employees in any unit. Airco, Inc., 273 NLRB 348 (1984).

Thus, the Board proceeds on a case-by-case basis in making its decision based on an examination of the facts presented in each case with regard to the foregoing factors. Overnite, supra. An examination of cases in the car rental industry, including those cited by the Employer, shows that there is no standard bargaining unit in this industry and that the Board utilizes this case-by-case approach. See, e.g., The Hertz Corporation, 319 NLRB 597, 601 (1995), enforcement denied on other grounds, 105 F.3d 868 (3d Cir. 1997) (appropriate unit comprised of all rental representatives, reservationists, telephone operators, office clericals, courtesy bus drivers, shuttlers, garage attendants, and combination workers [greasers, checkers, tire persons]); Budget Rent-a-Car of New Orleans, Inc., 220 NLRB 1264, 1265 (1975) (appropriate unit comprised of service representatives, with rental representatives excluded); Avis Rent-A-Car System, Inc., 280 NLRB 580, 583 (1986) (appropriate unit comprised of shuttlers, excluding rental and service agents); Checker Cab Company of Virginia d/b/a Avis Rent-A-Car, 260 NLRB 955 (1982) (appropriate unit consists of rental agents, service agents, and office employees); National Car Rental System, Inc. Car Rental Division, 237 NLRB 172 (1978) (appropriate unit comprised of garagemen and parking lot attendants); M.H.T. Corporation d/b/a Dollar Rent-A-Car, 250 NLRB 1361, 1363 (1980) (appropriate unit comprised of garage and maintenance employees and shuttlers).¹⁵

¹⁵ I do not find Ponderosa Hotel Co., 172 NLRB 1440 (1968), as cited by the Employer in its post-hearing brief, to have any bearing on the question of the appropriateness of a wall-to-wall unit in the car rental industry.

Wages and Benefits

All of the petitioned-for employees are hourly paid on a weekly basis. All employees receive the same benefits under FamPact,¹⁶ which is the Employer's contract with employees setting forth their rights and benefits.

While it is true that all employees are theoretically eligible to receive bonuses insofar as they are not forbidden to work at the rental counter preparing rental agreements, it is clear that the rental agents receive lower hourly wages with an expectation that the vast majority of their compensation will be in the form of bonuses, given that the bulk of their time will be spent at the rental counter. The Employer's Acting City Manager described the rental agents as spending "more time at the counter" and "heavily bonused." Mr. Nedic also noted that "the vast majority of their pay is bonus." Further, it appears to be the case that other job classifications will staff the counter only in the event it becomes necessary to do so because the line of customers is too long for the rental agents alone to serve the customers in a timely manner.¹⁷ That this is the case is borne out by Acting City Manager Nedic's estimate that only "in excess of 100" of an estimated 3100-3200 rental contracts which the Employer enters into at this facility monthly are prepared by a non-rental agent. While Mr. Nedic did not have the supporting documentation with him while on the stand, his estimates would tend to indicate that rental agents prepare a whopping 97% of all rental contracts, and that commissions are paid accordingly.¹⁸ The commission structure utilized by the Employer reflects the sales function and the customer relations aspects of the rental agent job that are generally absent from the unit classifications. By contrast, the persons in the unit

¹⁶ Although this contract is referred to as "Fam Pac" in the transcript, I take administrative notice of the presumably correct use of the term "Fam Pact" found in the Decision and Direction of Election in Case No. 20-RC-17501, and as used in the Employer's Brief (p. 4) in the present case.

¹⁷ In such situations, it is likely that the other persons staffing the counter on a temporary basis will receive commissions in addition to those paid to the rental agents, not instead of those paid to the rental agents.

¹⁸ That the key element of the rental agents' compensation is bonuses further serves to distinguish this case from certain of the Regional Director Decision and Directions of Election submitted by the Employer with its post-hearing brief (Employer's Brief, Exhs. 3 and 4). In Alamo Rent-A-Car and Professional, Clerical and Miscellaneous Employees Local 995, 28-RC-5717, there was no discussion of whether the rental agents were paid on a commission or bonus basis. The same is true of Alamo Rent-A-Car, Inc. and Teamsters Automotive Industrial and Allied Workers Local 495, 31-RC-6430, and moreover in that case the parties stipulated to the inclusion of rental agents within the unit. That the rental agents in the present case are paid on a largely commissioned basis further serves to distinguish this case from the Decisions and Directions of Election attached to the Employer's post-hearing brief as Exhibit 6. In none of those cases except one (Budget Rent A Car Systems, Inc., 37-RC-3632) was there any discussion of the rental agents being paid bonuses or commissions, and in the Budget case there was no dispute between the parties as to the inclusion of rental agents (called "customer service representatives" in that case) in the unit.

positions fundamentally work with and around cars, while rental agents work with and around customers.

Hours of Work

Most Alamo employees work 8 and one half-hour shifts including a half-hour for lunch. The service agents, rental agents, shuttlers,¹⁹ bus drivers,²⁰ best friend gate attendants, and best friend rental return agents work a morning shift from 6:00 or 7:00 a.m. to 3:30 p.m. or an afternoon shift from 3:30 or 4:00 p.m. to 12:00 or 12:30 a.m. These positions are covered seven days a week, with full time employees working five of the seven days. The mechanic and administrative clerk also work an 8 and one half-hour shift beginning at approximately 8:00 a.m., while the assistant to the mechanic also works an 8 and one half-hour shift but starts somewhat later in the day than does the mechanic. The mechanic works Monday through Friday while the assistant to the mechanic works Tuesday through Saturday. The Park and Fly cashiers work the same morning and afternoon shifts as do the service agents, but with an additional third shift from approximately 10:30 p.m. to 6:30 a.m. in order to ensure that persons can access their cars overnight. I do not find the fact that most employees work 8 and one-half hour shifts, which start at various relatively closely staggered times, to in and of itself demonstrate a community of interest among the employees with respect to working hours.

Supervision

The administrative clerk reports to the “lead on duty” (whether production lead or lead rental agent) or the shift manager if there is no lead on duty. The rental agents are directed by the lead rental agents. The service agents, bus drivers, shuttlers, best friend rental return agents, and best friend gate attendants are overseen by the production lead, or by the shift manager when no production lead is on duty.²¹ The mechanic and assistant mechanic are supervised by the shift managers. The Park and Fly cashiers are apparently directed by both the lead rental agents and the production lead. Thus, with the exception of the mechanic and assistant mechanic, I find that the employees which Petitioner seeks to include within the unit generally report to the production lead, whereas the rental agents report to the lead rental agents. Therefore, I do not find such a

¹⁹ The record reflects that the two shuttlers are part time employees who do not work 40 hour weeks, but who work regular 8 and one half hour shifts on the days on which they work.

²⁰ The record reflects that the bus drivers work essentially the same 8 and one half hour morning and afternoon shifts as do service agents, but the morning shift for bus drivers is staggered, with some beginning at 5:30 a.m., some at 8:00 a.m., and some at times between the two.

²¹ As to each of the best friend categories, the record indicates that they are supervised by the lead on duty, but would be supervised by a production lead rather than a lead rental agent at any time when a production lead and lead rental agent are simultaneously on duty.

degree of common supervision as to require a wall-to-wall unit as suggested by the Employer.

Qualifications, Training and Skills

In hiring service agents and shuttlers, the Employer looks for flexibility and reliability, and a valid drivers license, but does not impose any educational or prior experience requirements. In hiring the mechanic and assistant mechanic, the Employer requires the ability to perform the necessary repair and maintenance work which the Employer expects should be capable of being performed on site, but it does not appear from the record that the Employer imposes any educational or prior experience requirements. There is no record evidence of the hiring qualifications as to the Park and Fly cashiers, as the Employer apparently assumed operation of the Park and Fly lot from National Rental Car and simply retained the majority of National's Park and Fly cashiers as its own. In order to be hired as a bus driver from outside Alamo, an applicant must have a special drivers license containing a passenger endorsement for 18 passengers or more. At least four of the Employer's 17 bus drivers also have a special air brake with passenger endorsement which authorizes them to drive the Employer's bus which has air brakes. There is no record evidence of the hiring qualifications, if any, as to the two best friend positions, the rental agent positions, or the administrative clerk.

Contact with Other Employees

I find that the record supports the Petitioner's position that the petitioned-for employees generally work outside of the Employer's Rental Plaza building or in an unenclosed area, primarily dealing with vehicles, while the rental agents and administrative clerk work inside the building or in an enclosed area, primarily dealing with customers. The rental agents' primary function, as noted above, is to work at the main rental counter, interacting with and obtaining information from customers, giving directions, and furnishing the customer with the written rental agreement. By contrast, given that the best friend rental return agents, best friend gate attendants, service agents, bus drivers, shuttlers, and Park and Fly cashiers perform most of their work outside the main Rental Plaza rental counter, I find it more likely that the bulk of their interactions are with their fellow employees working outside which Petitioner seeks to include within the unit, not the rental agents and administrative clerk working inside. That the outdoor and indoor areas are purportedly connected as part of a single free-standing facility,²² rather than at separate locations as is apparently the case at San Francisco International Airport, does not detract from the distinction between those employees who work outdoors and those who work indoors.²³ In any event, the Park and Fly cashiers, bus

²² While there is no map of the facility in the record, the testimony indicates that at one end of the building is a vacuum area, adjacent to which is the car wash area, adjacent to which is an office, adjacent to which is the mechanics/lifts area. It is not clear from the record where the two vacuum areas are in relation to each other.

²³ While it is undisputed that the break room is available to all employees, there was no record evidence indicating that employees consistently take their breaks there or eat lunch there rather

drivers, and best friend gate attendants clearly work in locations not in or near the main Rental Plaza where the rental agents and administrative clerk are stationed.

Job Functions and Interchange

For the reasons set forth below, I find that the temporary interchange of job functions, and movement from one job to another, are primarily confined to employees within the petitioned-for unit rather than between unit employees and those employees which the Employer would seek to include. While Petitioner's Business Agent Furgas conceded that Alamo has a greater level of functional integration than do other companies in the car rental industry, I do not find the integration to be so extensive as to require a wall-to-wall unit as requested by the Employer.²⁴

At the hearing, the Employer adduced evidence that service agents sometimes perform functions ordinarily performed by rental agents, Park and Fly cashiers, and shuttlers.²⁵ While the record reflects that shuttlers sometimes perform the functions of service agents, there is no record evidence of shuttlers performing rental agent functions at the main counter in the Rental Plaza. Neither of the two current shuttlers formerly held other positions with the Employer. While the record does not reflect any evidence of bus drivers performing the functions of other employees, it does show that among the 17 bus drivers are 2-3 former service agents, 2-3 former shuttlers, one former rental agent, and an unspecified number of leads. There is no record evidence of the mechanic or assistant mechanic performing the functions of other employees, except insofar as the mechanic and assistant are sometimes required to arrange for the towing of vehicles needing repairs and/or their exchange for working vehicles. Nor does it appear from the record that the mechanic or assistant mechanic formerly occupied other positions with the Employer. As to the best friend gate attendants and best friend rental return agents, while there was some evidence that these persons occasionally staff the main rental counter, it appears that they do so only when the counter is busy, customers are waiting in line, and the rental agents can accordingly no longer assist the customers in a timely manner.²⁶ Of

than, for example, eating lunch off the premises. While it is also undisputed that all employees punch the time clock located in the break room, this ministerial act is likely accomplished within seconds and does not indicate the opportunity for, or actual evidence of, meaningful interactions among employees while punching in.

²⁴ Nor is there evidence in the record to support any contention that functional integration permeates all Alamo facilities. Employer's brief asserts, for example, that there is purportedly less functional integration and stricter adherence to job classifications at Employer's San Francisco International Airport facility than at the San Jose facility in the instant case. Employer's Brief, p. 11 n. 4.

²⁵ The Employer contends that three of the four service agents were formerly shuttlers.

²⁶ The record reflects that one best friend rental return agent is currently being trained as to how to drive a bus. While the record is not entirely clear, it appears that the employee is receiving this training not with the intent of switching to a full time bus driver position but with the intent of being able to drive buses in an emergency should the need arise.

the three best friend gate attendants, two are former service agents, while one is a former shuttler. Of the three best friend rental return agents, one is a former production lead, one is a former service agent, and one is a former Alamo employee whose job classification was not set forth in the record. Concerning the Park and Fly cashiers, there was evidence that if one cashier is manning the Park and Fly exit booth at a time when two cashiers are working, the second cashier might assist in performing shuttler or best friend duties such as moving cars around or assisting with rental returns.²⁷ However, there is no direct record evidence of cashiers staffing the main rental counter in the Rental Plaza, nor is there record evidence of other positions with Alamo formerly held by the persons currently serving as cashiers.

In contrast to the switching between Alamo jobs described above, none of the four current rental agents had other positions with the Employer prior to assuming their current duties with the Employer. Similarly, there is no evidence that the administrative clerk held another position with the Employer prior to assuming her current duties. Further, while there was evidence introduced as to the administrative clerk on occasion working at the main rental counter performing rental agent duties, I find that this supports rather than detracts from, Petitioner's position that rental agents and the administrative clerk should be excluded from the unit.²⁸

I find rental agent Qubti's testimony inconclusive as to interchange of job duties. On the one hand, Qubti testified that she sometimes performed shuttler or best friend rental return agent duties. On the other hand, it appears from the record that the bulk of rental returns handled by Qubti were handled at the regular rental counter where she would ordinarily be performing her rental agent duties (i.e., those returns which for some reason [e.g., customer paying cash, need to prepare accident report] could not be completed by the best friend rental return agent). As to the shuttling of cars, although the record shows that Qubti last performed this function two weeks prior to the hearing, there is no evidence as to the circumstances nor as to the frequency of her performance of this task. Qubti also testified that she had never worked at the exit booth as a best friend gate attendant, had never performed service agent functions such as gassing or vacuuming any cars, and had never seen a regular non-lead rental agent vacuuming and/or gassing a car.

I further find that it is appropriate to exclude the lead rental agents from the unit on the same basis that I have excluded the regular rental agents. In its post-hearing brief,

²⁷ The record reflects that one Park and Fly cashier is currently being trained as to how to drive a bus. While the record is not entirely clear, it appears that the employee is receiving this training not with the intent of switching to a full time bus driver position but with the intent of being able to drive buses in an emergency should the need arise.

²⁸ It stands to reason that the administrative clerk would be in a position to staff the rental counter, as, unlike the employees who generally work outdoors, the clerk works indoors not far from the rental counter and thus would readily be able to see the situation and take action when the line at the rental counter is becoming lengthy.

the Employer takes the position that the lead rental agents should be included in the unit even if the regular rental agents are excluded, arguing that Petitioner has failed to establish that the lead rental agents are supervisors. Employer's Brief, pp. 2-3, 12-14. Putting aside that the Employer did not advance this argument at the hearing, the Employer's argument misconstrues Petitioner's position. Petitioner does not argue that the lead rental agents should be excluded on the basis of being statutory supervisors, but instead contends that the lead rental agents should be excluded on the same basis that non-lead rental agents are excluded, as they each perform essentially the same duties. I find that the record does not support the Employer's position that lead rental agents regularly perform the duties of best friend rental return agents, best friend gate attendants,²⁹ bus drivers,³⁰ or administrative clerk.³¹ Conversely, there is record evidence of lead rental agents regularly working at the counter alongside regular rental agents. For all of these reasons, I conclude that the lead rental agents cannot be meaningfully differentiated from the regular rental agents, and therefore should be excluded from the unit.

Pattern and Practice in the Car Rental Industry

As noted above, there does not appear to be any standard bargaining unit in the car rental industry. It is noteworthy, however, that Petitioner's business agent testified that in none of the collective bargaining agreements which Petitioner has with other rental car companies operating at San Jose Airport (e.g., Hertz, Avis, National, and Budget) does the unit include persons which perform the job duties performed by rental agents or the administrative clerk at the Employer's facility.³²

²⁹ It appears that the lead rental agents would only perform the duties of a best friend gate attendant when the best friend gate attendant is taking a break.

³⁰ While the record reflects that the lead rental agents are occasionally called upon to drive the smaller van used to access trafficked areas not accessible to the larger buses, there is no indication from the record that driving of the van is among the normal bus driver duties, and thus no evidence that the lead rental agents are performing a bus driver function.

³¹ There is evidence in the record that the lead rental agents sometimes input time cards, but there is no indication from the record that this is ordinarily a duty of the administrative clerk, and thus no evidence of interchange of job duties between the lead rental agents and the administrative clerk.

³² In deciding that the administrative clerk is properly excluded from the petitioned-for unit, I rely upon the general Board policy that office clerical employees are customarily excluded from a production and maintenance unit, and see no reason to depart from this policy in the car rental context. Hygeia Coca-Cola Bottling Co., 192 NLRB 1127, 1129 (1971); Westinghouse Electric Corp., 118 NLRB 1043 (1957). In so concluding, I do not rely upon Laclede Cab Company d/b/a Dollar Rent-A-Car, 236 NLRB 206 (1978) as cited by Petitioner (Petitioner's Post-Hearing Brief, p. 4) for the proposition that office clericals are customarily excluded from a rental car bargaining unit. As noted below with respect to the Employer's attempted reliance upon stipulated wall-to-wall units, the Board does not consider itself bound by a collective bargaining history resulting

Bargaining History

There is no collective bargaining history at the location at issue. In this regard, and per the parties' joint request that I take administrative notice of the Decision and Direction of Election in Case No. 20-RC-17501, I concur with the Regional Director's finding in that case. Accordingly, I do not find that the 1989 stipulation to a wall-to-wall unit by the parties (Employer's Brief, Exh. 2) provides a basis for a finding that the only appropriate unit is a wall-to-wall unit. That stipulation did not result in a bargaining relationship and it occurred 10 years ago. Moreover, the area pattern of bargaining in the industry supports a unit limited to the petitioned-for classifications. In any event, the Board does not consider itself bound by a collective bargaining history resulting from a consent election conducted pursuant to a unit stipulated by the parties rather than one determined by the Board. Mid-West Abrasive Co., 145 NLRB 1665 (1964); Macy's San Francisco, 120 NLRB 69, 71 (1958). Thus, the stipulations submitted by the Employer (Brief, Exhs. 1 and 2) are not determinative.

Conclusion

While factors exist which militate in favor of the appropriateness of the broader unit requested by the Employer, there are other factors supporting the Petitioner's requested unit. That unit and non-unit employees utilize the same break room, punch the same time clock, are paid on the same day, and are covered by FamPact, does not give rise to a community of interest sufficient to justify a wall-to-wall unit in light of the considerations outlined above³³. In light of the above, I have concluded that the following employees of the Employer constitute a voting group appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service agents (including production lead), bus drivers, mechanic, assistant mechanic, "best friend" gate attendants, "best friend" rental return agents, shuttlers, and Park and Fly cashiers employed by the Employer at its facilities located in Santa Clara, California; excluding rental agents, lead rental agents, administrative clerk, other employees, guards, and supervisors as defined in the Act.

from a consent election conducted pursuant to a unit stipulated by the parties rather than one determined by the Board. Mid-West Abrasive Co., 145 NLRB 1665 (1964).

³³ Thus, although in a different industry, the instant case is analogous to Dinah's Hotel & Apartments, 295 NLRB 1100 (1989) where the Board found that the differences in the respective duties and in the respective conditions of employment showed that there was a "white collar" work force (here the rental agents and administrative clerks) which does not share a sufficient community of interest with the Employer's "blue collar" work force (the unit employees herein) which would compel their inclusion in an overall unit.

There are approximately 43 employees in the bargaining unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.³⁴ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by TEAMSTERS AUTOMOTIVE EMPLOYEES AND ALLIED WORKERS LOCAL 665, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care 359 Facility, 315 NLRB 359, 361 n. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before May 7, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

³⁴ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 14, 1999.

Dated at Oakland, California this 30th day of April, 1999.

/s/ James S. Scott

James S. Scott, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
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